

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE**

Donald Spinner

v.

Civil No. 08-cv-067-JL

Warden, New Hampshire State Prison, et al.

O R D E R


Donald Spinner has filed a motion to clarify in this matter (document no. 10). On August 15, 2008, Magistrate Judge Arenas issued an Order (document no. 9) directing Spinner to amend his habeas petition to demonstrate exhaustion of claim #3, as enumerated in Magistrate Judge Arenas' March 24, 2008 Order (document no. 6) directing Spinner to amend his petition to demonstrate exhaustion of all of his claims.

That designation of the claim to be amended was incorrect. In fact, Spinner has demonstrated exhaustion of claim #3. He has not demonstrated exhaustion of claim #4, as enumerated in the March 24 Order, alleging that:

Spinner's Fourteenth Amendment due process rights were violated when the trial court precluded Spinner from introducing testimonial evidence at the hearing on the new trial motion that Spinner's trial judge had fallen asleep during proceedings in other cases.

The motion to clarify is granted. Spinner is directed to amend his petition, in the manner discussed in Magistrate Judge Arenas' August 15 Order, to demonstrate exhaustion of claim #4 regarding testimonial evidence at the hearing on the new trial motion.

SO ORDERED.


James R. Muirhead
United States Magistrate Judge

Date: August 25, 2008

cc: Donald Spinner, pro se